

**MINUTES  
URBAN COUNTY PLANNING COMMISSION  
ZONING ITEMS PUBLIC HEARING**

**March 27, 2014**

- I. **CALL TO ORDER** – The meeting was called to order at 1:30 p.m. in the Council Chamber, 2<sup>nd</sup> Floor LFUCG Government Center, 200 East Main Street, Lexington, Kentucky.

Planning Commission members present: Will Berkley; Carla Blanton; Mike Cravens; David Drake; Karen Mundy; Mike Owens, Chair; Frank Penn (arrived at 1:33 p.m.); Carolyn Plumlee; Joseph Smith; and Bill Wilson. Absent was Patrick Brewer.

Planning staff members present: Chris King, Director; Bill Sallee; Jimmy Emmons; Traci Wade; Tom Martin; Cheryl Gallt; Dave Jarman; and Stephanie Cunningham. Other staff members present were: Tracy Jones, Department of Law; Tim Queary, Urban Forester; Casey Kaucher, Division of Traffic Engineering; Captain Greg Lengal and Lieutenant Joshua Thiel, Division of Fire and Emergency Services; and Hillard Newman, Division of Engineering.

- II. **APPROVAL OF MINUTES** – A motion was made by Ms. Plumlee, seconded by Mr. Drake, and carried 8-0 (Brewer, Mundy, and Penn absent) to approve the minutes of the February 27, 2014, Planning Commission meeting.

- III. **POSTPONEMENTS AND WITHDRAWALS** – Requests for postponement and withdrawal will be considered at this time.

1. **DP 2014-13: GROWTH PROPERTIES (AMD) (5/4/14)\*** - located at 100 Goodrich Avenue.  
(Council District 3)

**(Vision Engineering)**

Note: The purpose of this amendment is to depict a single family residence at 100 Goodrich Avenue, the line separating it from the B-1 zone, and to revise plan notes.

The Subdivision Committee Recommended: **Postponement.** There are concerns regarding the suitability of the proposed single family use and the historic storm water flooding conditions.

Should this plan be approved, the following conditions should be considered:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
7. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
8. Correct typographical errors throughout plan notes.
9. Restore access restrictions from previous note #11.
10. Discuss need to establish a finished floor elevation for proposed residence on 100 Goodrich Avenue.
11. Discuss possible 25' building line at 100 Goodrich Avenue.

Petitioner Representation: Matt Carter, Vision Engineering, was present representing the petitioner. He requested a two-week postponement of this item.

Action: A motion was made by Mr. Cravens, seconded by Ms. Plumlee, and carried 8-0 (Brewer, Mundy, and Penn absent) to postpone DP 2014-13 to the April 10, 2014, Planning Commission meeting.

2. **BOONE CREEK PROPERTIES, LLC, DBA BOONE CREEK OUTDOORS ZONING MAP AMENDMENT & BOONE CREEK OUTDOORS ZONING DEVELOPMENT PLAN**

- a. **MARC 2014-1: BOONE CREEK PROPERTIES, LLC, DBA BOONE CREEK OUTDOORS (3/27/14)\*** - petition for a zone map amendment from an Agricultural Rural (A-R) zone to an Agricultural Natural (A-N) zone, for 20.15 net (20.76 gross) acres, for property located at 8291 Old Richmond Road.

**COMPREHENSIVE PLAN AND PROPOSED USE**

The subject property is located within the Rural Service Area, which encompasses 200 square miles and about 70% of Lexington-Fayette County. The 1999 Rural Land Management Plan was developed to guide resource management and planning for this portion of the County, and the Plan recommends the subject property be utilized for Natural Area (NAT) land use. The 2013 Comprehensive Plan recommends updating, affirming and readopting the Rural Land Management Plan. The 2013 Comprehensive Plan's mission statement is to "provide flexible planning guidance to ensure that development of our community's resources and infrastructure preserves our quality of life, and fosters regional planning and economic development." The mission statement notes that this will be accomplished while protecting the environment,

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promoting successful, accessible neighborhoods, and preserving the unique Bluegrass landscape that has made Lexington-Fayette County the Horse Capital of the World.

The petitioner proposes to rezone the property to an Agricultural Natural (A-N) zone, and is requesting a conditional use to operate a commercial outdoor recreational facility that includes a tree canopy tour (ecotourism), welcome center, seasonal educational programs, and training for guides and builders of other zip line facilities. The petitioner also plans to maintain the existing conditional use permit for an outdoor recreational facility – the Boone Creek Angler's Club – which was approved as a private club by the Board of Adjustment in 2000.

The Zoning Committee Recommended: **Approval**, for the reasons provided by staff.

The Staff Recommends: **Approval** for the following reasons:

1. The requested Agricultural Natural (A-N) zoning for the subject property is in agreement with the Rural Land Management Plan's recommendations for Natural Areas (NAT) land use at this location.
  2. The 2013 Goals and Objectives also encourage the development of appropriate attractions and supporting uses that promote and enhance tourism (Theme C, Goal 1, Objective e); support the agricultural economy, horse farms, general agricultural farms, and the rural character of the Rural Service Area (Theme E, Goal 2); and protect the environment (Theme B).
  3. This recommendation is made subject to approval and certification of ZDP 2014-3: Boone Creek Outdoors prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.
- b. ZDP 2014-3: BOONE CREEK OUTDOORS (3/27/14)\* - located at 8291 Old Richmond Road.  
**(Barrett Partners)**

The Subdivision Committee Recommended: **Postponement**.

Should this plan be approved, the following requirements should be considered:

1. Provided the Urban County Council rezones the property A-N; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. Greenspace Planner's approval of the treatment of greenways and greenspace.
7. Department of Environmental Quality's approval of environmentally sensitive areas.
8. Discuss proposed development in front of 300' building line and need for variances.
9. Discuss proposed caretaker's apartment (per Art. 8-3(c)(8) of the Zoning Ordinance).
10. Addition of proposed square footage for observation deck(s) and welcome center deck to site statistics.
11. Clarify employee parking information.
12. Denote that the parking lot shall be screened and paved in accordance with the requirements of the Zoning Ordinance.
13. Denote that the proposed access and any required road improvements shall be determined at the time of the final development plan.
14. Revise flex note to clarify that it applies to the canopy tour only.
15. Discuss the Board of Adjustment's approved 2000 Conditional Use development plan relative to the proposed plan.

Petitioner Representation: Richard Murphy, attorney, was present representing the petitioner. He stated that the conditional use request filed along with this zone change was not listed on the agenda, adding that the petitioner would like to request that the Planning Commission reconsider the decision not to hear the conditional use request, which they made at their meeting on February 27<sup>th</sup>. Mr. Murphy said that the petitioner was aware that, if the Commission did vote to hear the conditional use, it could not be heard at this meeting due to notification requirements, but the petitioner still feels very strongly that a hearing is required under Kentucky state law and the Kentucky and United States Constitutions. The petitioner still contends that the proposed conditional use is substantially different from the one that is the subject of a pending court case, and that there is no requirement that a new case cannot be heard due to pending litigation. Mr. Murphy said that the petitioner is requesting that the Commission reconsider their motion from one month ago, and set the date for the conditional use and zone change hearing at their meeting in April.

Chairman Comment: Mr. Owens stated that the Planning Commission passed a motion not to hear the conditional use request because it was currently under appeal. He asked Ms. Jones if she could provide any legal guidance with regard to Mr. Murphy's request.

Ms. Jones stated that, from a procedural standpoint, if the Commission chose to reconsider their earlier decision, the motion would need to be made by someone who was on the prevailing side of that motion. She said that her opinion was no different from what she told the Commission at the last hearing; she believed that the Commission was required to hear the conditional use request, but the Commission voted that they believed that the pending actions (court case and conditional use re-

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quest) were the same.

Mr. Owens asked if any member of the Commission who was on the prevailing side of the February 27<sup>th</sup> motion wished to make a motion to reconsider. No such motion was made.

Mr. Murphy requested indefinite postponement of the zone change and development plan on this case.

Action: A motion was made by Ms. Plumlee, seconded by Mr. Wilson, and carried 7-2 (Drake opposed; Cravens recused; Brewer and Mundy absent) to indefinitely postpone MARC 2014-1 and ZDP 2014-3.

- IV. LAND SUBDIVISION ITEMS** - The Subdivision Committee met on Thursday, March 6, 2014, at 8:30 a.m. The meeting was attended by Commission members: Carolyn Plumlee, Frank Penn, Will Berkley, Karen Mundy and Mike Owens. Committee members in attendance were: Hillard Newman, Division of Engineering; and Casey Kaucher, Division of Traffic Engineering. Staff members in attendance were: Chris King, Bill Sallee, Tom Martin, Jimmy Emmons, Traci Wade, Cheryl Gallt, Dave Jarman, Kelly Hunter, Barbara Rackers, Denice Bullock and Scott Thompson, as well as Captain Greg Lengal and Lieutenant Joshua Thiel, Division of Fire & Emergency Services; Lieutenant David A. Lyons, Police; and Tracy Jones, Department of Law. The Committee made recommendations on plans as noted.

General Notes

*The following automatically apply to all plans listed on this agenda unless a waiver of any specific section is granted by the Planning Commission.*

1. All preliminary and final subdivision plans are required to conform to the provisions of Article 5 of the Land Subdivision Regulations.
2. All development plans are required to conform to the provisions of Article 21 of the Zoning Ordinance.

- V. ZONING ITEMS** - The Zoning Committee met on Thursday, March 6, 2014, at 1:30 p.m. in the Division of Planning Office. The meeting was attended by Commission members Carla Blanton, Mike Cravens, and Bill Wilson. The Committee reviewed applications, and made recommendations on zoning items as noted.

**A. ABBREVIATED PUBLIC HEARINGS ON ZONING MAP AMENDMENTS**

The staff will call for objectors to determine which petitions are eligible for abbreviated hearings.

The procedure for these hearings is as follows:

- Staff Reports (30 minute maximum)
- Petitioner's report(s) (30 minute maximum)
- Citizen Comments
  - (a) proponents (10 minute maximum OR 3 minutes each)
  - (b) objectors (30 minute maximum) (3 minutes each)
- Rebuttal & Closing Statements
  - (a) petitioner's comments (5 minute maximum)
  - (b) citizen objectors (5 minute maximum)
  - (c) staff comments (5 minute maximum)
  - (d) Hearing closed and Commission votes on zone change petition and related plan(s)

- B. FULL PUBLIC HEARINGS ON ZONE MAP AMENDMENTS** – Following abbreviated hearings, the remaining petitions will be considered.

The procedure for these hearings is as follows:

- Staff Reports (30 minute maximum)
- Petitioner's report(s) (30 minute maximum)
- Citizen Comments
  - (a) proponents (10 minute maximum OR 3 minutes each)
  - (b) objectors (30 minute maximum) (3 minutes each)
- Rebuttal & Closing Statements
  - (a) petitioner's comments (5 minute maximum)
  - (b) citizen objectors (5 minute maximum)
  - (c) staff comments (5 minute maximum)
  - (d) Hearing closed and Commission votes on zone change petition and related plan(s)

**Note:** Requests for additional time, stating the basis for the request, must be submitted to the staff no later than two days prior to the hearing. The Chair will announce its decision at the outset of the hearing.

Note: Ms. Mundy arrived at this time.

**1. KID'S HOUSE ZONING MAP AMENDMENT & KID'S HOUSE ZONING DEVELOPMENT PLAN**

- a. MARV 2014-4: KID'S HOUSE (5/4/14)\* - petition for a zone map amendment from a Single Family Residential (R-1C) zone to a Professional Office (P-1) zone, for 1.083 net (1.219 gross) acres, for property located at 1449-1451 Bryan Avenue. Landscaping variances were also requested with this application.

**COMPREHENSIVE PLAN AND PROPOSED USE**

The 2013 Comprehensive Plan's mission statement is to "provide flexible planning guidance to ensure that development of our community's resources and infrastructure preserves our quality of life, and fosters regional planning and economic development." The mission statement notes that this will be accomplished while protecting the environment, promoting successful, accessible neighborhoods, and preserving the unique Bluegrass landscape that has made Lexington-Fayette County the Horse Capital of the World.

The subject property is located within the boundary of the Central Sector Small Area Plan (CSSAP) and Subarea "D", adopted by the Planning Commission in April 2009. The CSSAP makes no specific land use or corridor recommendations for the Bryan Avenue area, but does encourage the development of neighborhood service nodes that offer a variety of products and services (Principle #2: Redevelopment and Investment, Goal #1). The petitioner proposes to rezone the property in order to become fully compliant as a commercial child care center, because the use is non-conforming in the current zone.

The Zoning Committee Recommended: **Approval**, for the reasons provided by staff.

The Staff Recommends: **Approval**, for the following reasons:

1. The Central Sector Small Area Plan (CSSAP), adopted by the Planning Commission in 2009, and incorporated into the 2013 Comprehensive Plan, encourages the development of neighborhood service nodes that offer a variety of products and services (Principle #2: Redevelopment and Investment, Goal #1). The existing child care center provides a necessary neighborhood service for the immediate area, and helps to implement that recommendation.
  2. The proposed Professional Office (P-1) zoning is appropriate, and the existing Single-Family Residential (R-1C) zoning is inappropriate, for the following reasons:
    - a. The existing use has been located on the property for over 35 years; thus, it is a stable land use and is unlikely to relocate.
    - b. A child care center is a principal permitted use in the P-1 zone; thus, the rezoning will bring the use into compliance with the local zoning regulations as it was in 1977, as requested by the state oversight agency.
    - c. The child care center, combined with the adjoining church use, create an appropriate transition from the more intense highway service business uses along New Circle Road. The child care center is a step down in land use as it adjoins single-family residential dwellings.
    - d. The child care center, along with the church and several other small businesses along the Bryan Avenue corridor, create a neighborhood service node for the Castlewood and Meadow Park neighborhoods in this portion of the Central Sector.
  3. This recommendation is made subject to the approval and certification of ZDP 2014-18: KID'S HOUSE, prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.
- b. REQUESTED VARIANCE
1. Reduce the property perimeter landscaping and screening from 15' to 5' and remove the requirement for a double row 6' hedge.

The Staff will report at the hearing.

- c. ZDP 2014-18: KID'S HOUSE (5/4/14)\* - located at 1449 and 1451 Bryan Avenue.

**(Barrett Partners)**

The Subdivision Committee Recommended: **Approval**, subject to the following conditions:

1. Provided the Urban County Council rezones the property P-1; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Discuss existing driveway and arrows for direction.
8. Discuss compliance with Article 18 or need for landscape variance.

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Zoning Presentation: Ms. Wade presented the staff report, briefly orienting the Commission to the location of the subject property, on the north side of Bryan Avenue inside New Circle Road. She said that the predominant zoning in the vicinity of the subject property is single family residential, with B-1 zoning along Bryan Avenue to the west and near New Circle Road, and B-3 zoning along New Circle Road to the northeast.

Ms. Wade displayed several aerial photographs of the subject property, noting the large detention basin located to its rear, as well as the right-of-way of a former alley. She said that several houses were removed some years ago in order to allow for the construction of the detention basin, which provides for stormwater drainage from the New Circle Road area and under Bryan Avenue to the south. The subject property is also bounded by two single family homes to the west, and a church to the east. The child care center shares parking with the church, since it has only four parking spaces on the subject property. Ms. Wade noted that there are many existing commercial uses in the B-3 zone along New Circle Road, including restaurants, gas stations, and a Walgreen's drugstore.

Ms. Wade stated that the petitioner is requesting the P-1 zone in order to maintain the existing child care center on the subject property. The petitioner has had some difficulty convincing the State agency that is in charge of local Ordinance compliance that their use is, in fact, compliant; even though the staff has provided a zoning letter to that effect. The petitioner is requesting to rezone the property in order to mitigate that issue. Ms. Wade explained that the petitioner is requesting the P-1 zone because a daycare center is a principal use in that zone. She said that the daycare center was established on the subject property, in the R-1C zone, in 1977. At that time, a daycare center was a conditional use in the single-family residential zones; but, since then, that conditional use is no longer available. The daycare center is, therefore, currently considered a legal non-conforming use. It has maintained the same maximum number of children since it located on the subject property in 1977.

Ms. Wade stated that the subject property is located within Subarea D of the Central Sector Small Area Plan (SAP) boundary. That SAP, which was adopted by the Planning Commission in 2009, does not make any specific land use or corridor recommendations for Bryan Avenue. It does, however, encourage development of neighborhood commercial and service nodes, to offer a variety of products and services. The petitioner contends that the P-1 zone is appropriate at this location, and the existing R-1C zone is inappropriate, with which the staff is in agreement. The staff is recommending approval of this request, for the reasons as listed in the staff report and on the agenda; and the Zoning Committee recommended approval at their meeting three weeks ago.

Development Plan Presentation: Ms. Gallt presented the corollary final development plan, noting that there was no need for additional square footage on the subject property, since the existing child care facility is proposed to remain. She said that the Subdivision Committee recommended approval of this plan, subject to the eight conditions as listed on the agenda.

With regard to condition #7, Ms. Gallt stated that, in reviewing the plan, the existing driveway appears to be only partially paved. The staff had some questions about the use of the additional driveway area, so they recommended the addition of condition #7 to address those concerns.

Variance Presentation: Mr. Sallee presented the staff report on the requested variance, explaining that the petitioner is requesting to reduce the zone-to-zone perimeter screening requirements. Those requirements call for a buffer area of 15' inside the subject property to screen it, when a non-residential zone is adjacent to a residential zone. The petitioner is requesting to reduce the buffer to between 5' and 8' around the perimeter of the subject property, and to be relieved from the requirement of installing additional plantings. Mr. Sallee stated that the aerial photograph displayed by Ms. Wade depicted that there is some existing landscape material around the subject property. Referring to an exhibit displayed on the overhead, he said that the staff had received it one day prior to this hearing. That exhibit depicts the extent to which the petitioner is proposing to retain the existing landscape buffer, primarily along the southwest and northwest property lines. The petitioner is proposing to augment the landscaping along the northeast and north corners of the property, with an additional hedge planting and four trees along the northeast property line.

Mr. Sallee stated that the child care use has been in existence on the subject property in the R-1C zone since 1977, when it was approved by the Board of Adjustment. In 1983, the Zoning Ordinance was amended to no longer allow a freestanding daycare center in any of the single family residential zones, which caused the subject property to become a non-conforming use. The petitioner is not proposing any physical changes to the site, other than the addition of plantings, as depicted on their exhibit. The petitioner contends that the existing landscape buffer is sufficient to buffer the property from the church, the detention basin, and the one dwelling unit that adjoins the property to the southwest. Mr. Sallee said that the staff was generally in agreement, and finds that the existing landscape material, although not technically compliant with Article 18, is sufficient to buffer the property, as it has been for years.

Mr. Sallee stated that the Landscape Review Committee is established by Article 18 to review all proposals for landscape variances. This request was to be discussed at their meeting in March, but the committee did not have a

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quorum. There were two members present, and they discussed the proposal with the staff members who were present. Those discussions led to two general recommendations from the members. First, they felt there should be the planting of shade trees along the property frontage, in the style of street trees, since there is no Ordinance provision that would require street trees at this location. In addition, the committee members felt that this proposal was acceptable, so long as no physical changes were proposed to the property. However, should the property redevelop at some point in the future, the committee members were concerned about the possible effects of the landscape variance. Mr. Sallee stated that the staff, in drafting their conditions for approval, tried to address those two concerns. He said that the staff is recommending approval of the requested variances, for the following reasons:

- a. Granting the requested landscape variances will not adversely affect the public health, safety or welfare; and will not alter the character of the general vicinity, and will not cause a hazard or nuisance to the public. The variances are requested because no physical change or expansion of the existing buildings or parking lot is proposed by the applicant, and because it would be difficult to locate additional fences or hedges along these property lines due to the location and layout of the existing perimeter driveway, the existing parking spaces, and along the southwestern property line, due to the existing trees.
- b. Granting the requested landscape variances will not result in an unreasonable circumvention of the Zoning Ordinance because the existing child care use pre-dates the landscaping requirements of the Zoning Ordinance, and no physical expansion of any of the site facilities is proposed. In addition, there is some well-established landscaping and trees in place along the northwestern and southwestern sides of the subject property.
- c. The special circumstance that applies to this property that does not generally apply to land in the general vicinity is that three sides of the subject site are bordered by a collector street and/or non-residential uses. Thus, the existing trees and shrubs will continue all the necessary screening along the northwestern and northeastern property lines, which meets the intent of the landscape requirements.
- d. Strict application of the requirements of the Zoning Ordinance would deprive the applicant of a reasonable use of the property and would create an unnecessary hardship to the applicant because there already exists adequate screening between the subject property and the adjacent property. The applicant is not planning any substantial change to the existing parking area, and there are no physical changes associated with the day care center use that has been at this location for decades.
- e. The circumstances surrounding the requested variances are not the result of the actions of this applicant, as the current day care land use is a legal non-conforming use of the property, and the rezoning has been requested only as a result of the requirements of the Commonwealth of Kentucky.

This recommendation of approval is made subject to the following conditions:

1. Provided the Urban County Council rezones the property P-1; otherwise, any Commission action of approval of this variance is null and void.
2. Should the property be rezoned, it shall be developed in accordance with the approved Development Plan, or as amended by a future Development Plan approved by the Commission; or as a Minor Amendment permitted under Article 21-7 of the Zoning Ordinance.
3. A note shall be placed on the Zoning Development Plan indicating the variances that the Planning Commission has approved for this property (under Article 6-4(c) of the Zoning Ordinance).
4. Prior to obtaining any new Occupancy Permit, the applicant shall obtain a Zoning Compliance Permit from the Division of Planning.
5. Five (5) shade trees shall be planted along the front of the subject property, within 10' of the existing sidewalk. Trees may be from the large species list on the adopted Planting Manual, and shall be at least 1" caliper at the time of their planting. A minimum of one (1) tree per year shall be planted on the subject property, beginning in 2014, provided that all must be installed within 36 months of the approval of this zone change and variance.
6. A note shall be added to the development plan indicating that the need for additional landscaping will be considered along the property lines in the event a future redevelopment is proposed for the subject property.

Mr. Sallee stated that the last two conditions address the concerns of the Landscape Review Committee. Condition #5 would require the planting of five shade trees along the property frontage, over the next five planting seasons, to implement the recommendations of the committee. Condition #6 would require the review of the perimeter landscaping provisions, should the subject property redevelop at some point in the future.

Commission Questions: Mr. Berkley asked why the staff was recommending the planting of shade trees along the property frontage. Mr. Sallee answered that it is essential to provide a good line of sight for the child care center's outdoor play area. He explained that it was his understanding that the two Landscape Review Committee members who were present at the meeting were concerned about the need for additional tree canopy on the subject property. He stated that the P-1 zone requires 20% tree canopy, and the subject property is unlikely to attain that figure if the requested variance is granted. The additional trees recommended can be considered as an attempt to increase the canopy, even though it is unlikely to meet the requirement. Mr. Sallee added that the Commission could choose to delete that condition, if they do not agree with that assessment.

Petitioner Representation: Bill Bausch, attorney, was present representing the petitioner. He stated that the petitioner is in agreement with the staff's recommendations, and will comply with all of the conditions if necessary. However, the peti-

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tioner would like to ask the Commission to consider the line of sight issues along the property frontage, given that the driveway is used primarily for loading and unloading children from busses. Mr. Bausch said that employees of the child care center are also concerned about visibility on the property when they arrive and depart from the property in the dark. He asked that the Commission consider the number of trees suggested, and recommend providing fewer trees with more space between them, in order to provide for greater visibility on the property.

Commission Questions: Mr. Penn asked if the petitioner has a reciprocal parking agreement with the church, and if that is where employees will park. Mr. Bausch answered that the child care center staff and parents who are dropping off children will park there. He said that a reciprocal agreement was put in place as part of the application process for this rezoning request. Mr. Bausch stated that there are 17 delineated parking spaces, and the terms of the lease were set forth in the agreement. Mr. Penn asked if the busses enter and leave the property from the same access. Mr. Bausch answered that the child care center typically uses vans, which do enter and exit the property from the same access point.

Ms. Blanton asked if the petitioner would prefer to remove the tree requirement altogether, or reduce the number of trees. Mr. Bausch answered that it would not be onerous to provide the trees, since a 1" caliper was specified. He said that the petitioner would be willing to provide three trees, located closer to the southeast corner of the property, with the hope that, as they grow, a line of sight to the driveway could still be maintained.

Mr. Owens asked if the petitioner's main concern is about the five recommended street trees. Mr. Bausch answered affirmatively.

Citizen Comment: There were no citizens present to comment on this item.

Zoning Action: A motion was made by Ms. Blanton, seconded by Mr. Penn, and carried 10-0 (Brewer absent) to approve MARV 2014-4, for the reasons provided by staff.

Variance Action: A motion was made by Ms. Blanton, seconded by Mr. Wilson, and carried 10-0 (Brewer absent) to approve the requested variance, for the reasons provided by staff, subject to the six conditions, changing #5 from five shade trees to three shade trees.

Development Plan Action: A motion was made by Ms. Blanton, seconded by Ms. Mundy, and carried 10-0 (Brewer absent) to approve ZDP 2014-8, subject to the first six conditions; changing #7 to read "resolve;" and deleting #8.

## **2. MILK & HONEY DAYCARE/PRESCHOOL ZONING MAP AMENDMENT & COVENANT CHURCH, INC./THE PINES ZONING DEVELOPMENT PLAN**

- a. MARC 2014-5: MILK & HONEY DAYCARE/PRESCHOOL (5/4/14)\* - petition for a zone map amendment from an Agricultural Urban (A-U) zone to a Planned Neighborhood Residential (R-3) zone, for 5.48 net (5.84 gross) acres, for property located at 2700 Old Todds Road. A conditional use permit request was also filed with this zone change.

### **COMPREHENSIVE PLAN AND PROPOSED USE**

The 2013 Comprehensive Plan's mission statement is to "provide flexible planning guidance to ensure that development of our community's resources and infrastructure preserves our quality of life, and fosters regional planning and economic development." The mission statement notes that this will be accomplished while protecting the environment, promoting successful, accessible neighborhoods, and preserving the unique Bluegrass landscape that has made Lexington-Fayette County the Horse Capital of the World.

The petitioner proposes to rezone the subject property in order to establish the child care center as the primary land use on the property, and increase the number of children that may be cared for at the center. A conditional use permit has also been requested as part of this zone change.

The Zoning Committee Recommended: **Approval**, for the reason provided by staff.

The Staff Recommends: **Approval**, for the following reason:

1. The proposed Planned Neighborhood Residential (R-3) zoning is appropriate, and the existing Agricultural Urban (A-U) zoning is inappropriate for the subject property, for the following reasons:
  - a. The subject property is located within the Urban Service Area boundary, and the existing A-U zoning is no longer appropriate since all utilities and urban services are available to serve the site.
  - b. The proposed R-3 zoning is most compatible with the surrounding residential zoning.
  - c. The child care center, in existence since 1995, is a beneficial and necessary neighborhood service for this portion of the Urban Services Area.

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2. This recommendation is made subject to the approval and certification of ZDP 2014-19: COVENANT CHURCH, INC./THE PINES, prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.

b. REQUESTED CONDITIONAL USE

1. Child Care Center

The Zoning Committee Recommended: **Approval**, for the reasons provided by staff.

The Staff Recommends: **Approval**, for the following reasons:

- a. A child care facility at this location, even if expanded, should not adversely affect the subject or surrounding properties. The day care has existed at this location for about 20 years, in conjunction with the church, and will not cause a problem if it continues as the principal use of the property. The existing screened and fenced play area, the parking, and other facilities can easily accommodate the proposed use.
- b. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. Provided the Urban County Council rezones the subject property R-3; otherwise, any Planning Commission action of approval is null and void.
  2. Should the subject property be re-zoned to R-3 by the Council, it shall be developed according to the submitted Zoning Development Plan, or as further amended by the Commission.
  3. All necessary permits shall be obtained from the Division of Building Inspection prior to any construction, and prior to occupancy of the new facilities.
  4. The parking lot and driveways shall be paved, with spaces delineated, and landscaped in accordance with Articles 16 and 18 of the Zoning Ordinance, with a minimum of 30 parking spaces.
  5. Signage shall comply with Article 17 of the Zoning Ordinance.
  6. That the hours of operation be from 6:30 am to 6:00 pm, Monday through Friday.
  7. A fenced and screened play area shall remain on the property that is no less than 5,000 square feet in size.
  8. That the child care center be limited to a maximum enrollment of two hundred (200) children, or as allowed by the State based on the square footage of the building. Should the applicant desire to accommodate any more than 200 children in the future, BOA approval will be required.
- c. ZDP 2014-19: COVENANT CHURCH, INC./THE PINES (5/4/14)\* - located at 2700 Old Todds Road.  
(MSC)

The Subdivision Committee Recommended: **Approval**, subject to the following conditions:

1. Provided the Urban County Council rezones the property R-3; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
3. Urban County Traffic Engineer's approval of street cross-sections and access.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Addressing Office's approval of street names and addresses.
6. Urban Forester's approval of tree preservation plan.
7. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
8. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
9. Division of Waste Management's approval of refuse collection locations.
10. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
11. Dimension parking aisles, spaces and apron.
12. Dimension sidewalks.
13. Addition of tree preservation plan information.
14. Identify and dimension all buildings shown on plan and correct site statistics to include basement sq. ft.
15. Addition of "existing" and "proposed" zoning information on site data.
16. Addition of landscaping along northeast corner of existing parking lot and eastern property corner.
17. Discuss improvements to Old Todds Road.
18. Discuss dumpster location (existing and proposed).

Zoning Presentation: Ms. Wade presented the staff report on the requested zone change, briefly orienting the Commission to the location of the subject property on the south side of Old Todds Road, between North Mt. Tabor Road and Palumbo Drive. She said that the subject property is bounded on all sides by residential zoning, with R-1T zoning to the north and south; R-3 to the east; and R-4 to the west. She displayed two aerial photographs of the subject property, noting the location of Palumbo Drive and the existing structure, which is located in the middle of the property, with parking on both sides.

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\* - Denotes date by which Commission must either approve or disapprove request.



Ms. Wade stated that the petitioner is requesting the rezoning to R-3 in order to allow the existing daycare center to remain on the property and expand its operations. The existing church intends to sell the property to the daycare center, which has been operating in the basement of the facility for a number of years. The daycare center is proposing to remodel the main floor of the building, and expand their facilities to use that space as well, in order to serve more children.

Ms. Wade said that the Board of Adjustment (BOA) approved the daycare as a conditional use on the subject property in the mid-1990s. The petitioner is proposing a residential zone in this location because daycare centers are conditional uses in the R-3 zone. The existing A-U zone only permits a childcare center when it is accessory to a church or school. Ms. Wade stated that, for that reason, the staff believes that the proposed R-3 zone is appropriate for the subject property, even though no residential use is proposed at this time. She noted that the subject site cannot be connected to any of the surrounding development, because there are no existing stub streets, but the parcel is large enough to accommodate between 25 and 50 dwelling units if the childcare center ceases to exist or a portion of the property is sold for development. The staff also believes that the daycare center provides a necessary service to this portion of the county. Ms. Wade noted that the A-U zone is typically considered a "holding zone" until more urban development is possible at a location. The Zoning Ordinance notes specifically that it is "a placeholder until appropriate urban services are available to serve the land." All urban services are currently available on the subject property.

Ms. Wade stated that the staff and Zoning Committee recommended approval of this request, for the reasons as listed in the staff report and on the agenda.

Development Plan Presentation: Mr. Martin presented the associated final development plan, noting that revised conditions for approval had been distributed to the Commission members prior to the start of this hearing. Referring to a rendered development plan, he noted the existing driveway access into the parking area, which has 79 spaces. He stated that the existing structure on the property is 11,556 square feet in size, including the basement. One large play area, over 5,000 square feet in size, is located toward the rear of the property, and an additional play area adjoins the building. There is an existing detention area on the property as well.

Mr. Martin stated that this is a revised version of the plan. He said that the staff is recommending approval of the plan, subject to the following revised conditions:

1. Provided the Urban County Council rezones the property R-3; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
3. Urban County Traffic Engineer's approval of street cross-sections and access.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Addressing Office's approval of street names and addresses.
6. Urban Forester's approval of tree preservation plan.
7. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
8. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
9. Division of Waste Management's approval of refuse collection locations.
10. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
- ~~11. Dimension parking aisles, spaces and apron.~~
- ~~11.12. Dimension sidewalks and apron.~~
- ~~12.13. Addition of tree preservation plan information.~~
- ~~14. Identify and dimension all buildings shown on plan and correct site statistics to include basement sq. ft.~~
- ~~15. Addition of "existing" and "proposed" zoning information on site data.~~
- ~~16. Addition of landscaping along northeast corner of existing parking lot and eastern property corner.~~
- ~~13.17. Discuss Denote that all improvements to Old Todds Road shall be completed prior to issuance of an occupancy permit for the first floor.~~
- ~~18. Discuss dumpster location (existing and proposed).~~

Mr. Martin stated that, although this revised plan had satisfied many of the previous conditions for approval, conditions #11 and #12 refer to some additional "clean-up" work that needs to be done. Condition #13 arose from the submission of the revised plan, which included street improvements in the depicted cross-section.

Mr. Martin explained that the staff spoke to the petitioner immediately prior to the start of today's public hearing, and learned that the petitioner was not aware of the requirement to construct improvements prior to the issuance of an occupancy permit. The petitioner is concerned with their ability to construct those improvements in the required time frame. After a discussion with the staff of the Division of Traffic Engineering, the staff is recommending that condition #13 require the provision of a sidewalk along the Old Todds Road frontage, prior to the issuance

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of a certificate of occupancy for the first floor of the building. The staff is concerned about the impact of the expansion of the child care use on traffic in the vicinity of the subject property; and they believe that, at a minimum, a sidewalk should be provided for parents and employees traveling to and from the child care center. Mr. Martin noted that the staff believes that the construction of curb and gutter could be deferred to the time of any future development of the subject property. He also noted that one of the zone change conditions requires that, should the capacity of the child care center exceed 200 children, the petitioner would have to return to the Board of Adjustment. The staff believes that curb, gutter, and other street improvements could be reviewed at that time as well. The petitioner has indicated that they are concerned about the placement of the proposed sidewalk due to the topography of the property, but the staff believes that that could be resolved by placing the sidewalk in an easement adjacent to the right-of-way.

Commission Questions: Ms. Mundy stated that she had looked at the subject property, and it appeared to be very steep. She asked if requiring construction of a sidewalk on the property would cause a hardship for the petitioner. Mr. Martin answered that the staff believes that a sidewalk can be provided, but the location might need to be adjusted to accommodate those slope conditions.

Mr. Penn asked if the property could be subdivided once it is rezoned to R-3. Mr. Martin answered affirmatively, and noted that, if it were proposed for subdivision in the future, the staff would discuss the necessary public improvements as required by the Subdivision Regulations.

Mr. Cravens asked if Old Todds Road is a state roadway. Mr. Martin answered that it was formerly a state road at some point, but he was unsure about its status at this time. Mr. Cravens asked if the Kentucky Department of Transportation (KTC) would need to be involved if it is, in fact, a state road. Mr. Martin responded that KTC might need to be involved, but the sidewalk could be constructed in an easement rather than in the right-of-way.

Mr. Owens asked if a condition should be added to reflect the need for public improvements if the property is proposed for subdivision. Mr. Martin answered that a condition could be added to review the need for additional improvements at future development or subdivision of the property.

Conditional Use Presentation: Mr. Emmons presented the staff report on the requested conditional use. He explained that, in 1984, the Board of Adjustment approved a church on the subject property. In 1994, the childcare center, in association with the existing church, was approved by the BOA.

Mr. Emmons stated that, in reviewing the conditional use request, the staff determined that there is sufficient room on the subject property for the childcare use to expand, since it has an adequate amount of play area and sufficient parking. He said that the BOA approved the childcare use in 1994 with typical conditions, such as hours of operation. At the time, the BOA did limit the childcare facility to 60 children. The petitioner has indicated a desire to expand to enrollment to 120 – 150 children. Mr. Emmons stated that the staff is recommending approval of this request, for the reasons as listed on the agenda, with the eight conditions as listed. He noted that the staff is recommending that enrollment be limited to 200 children; should the petitioner desire to increase enrollment beyond that number, BOA approval would be required.

Petitioner Representation: Nathan Billings, attorney, was present representing the petitioner. He stated that the petitioner is in agreement with the staff's recommendations for the zone change, conditional use, and development plan, with the exception of the improvements to Old Todds Road.

Mr. Billings said that there was a discussion about those improvements at the Commission's Subdivision Committee meeting three weeks ago; and because of some poor communication with the engineer, the improvements were included on the revised version of the development plan. The petitioner contends that the childcare center's daily functioning will not change at all if the property is rezoned, except that it is likely to grow at some point in the future. The site is not currently accessible to pedestrians, with the exception of one sidewalk to an adjacent townhouse development. The Chelsea Woods subdivision, located across Old Todds Road from the subject property, does not have street improvements, nor does the adjacent single family residence. Mr. Billings stated that the petitioner believes that sidewalk and road improvements would be appropriate on the site, but only if the childcare use changes or the property is subdivided. He said that it would be appropriate to include a note on the plan, denoting that road improvements to Old Todds Road, including the sidewalk, should be done in the future. If the Commission chooses to require the construction of a sidewalk at this time, the petitioner believes that it could be located outside the 30' right-of-way. Mr. Billings said that there is an existing detention basin and a significant slope, which will affect the location and configuration of the sidewalk, but the petitioner believes that it can be constructed.

Commission Questions: Mr. Penn asked if the petitioner was in agreement with limiting the enrollment of the childcare center to 200 children. Mr. Billings answered affirmatively.

Ms. Mundy asked if any of the children access the facility on foot. Jackie Pittard, presenting on behalf of the petitioner, stated that there have never been any children or parents who access the childcare center on foot. She noted

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that even Fayette County Public Schools' busses drive directly to the front door of the center to drop off and pick up students.

Mr. Berkley stated that he believed that placement of a sidewalk on the subject property would be difficult, until Old Todds Road is re-designed. He said that he did not believe that the petitioner should have to provide the sidewalk at this time, only to have it removed as part of a road improvement project in the future.

Citizen Comments: There were no citizens present to comment on this request.

Commission Discussion: Mr. Owens stated that there is a residential development to the east of the subject property, and he believed that there could be residents there who would want to walk to the subject property. He added that he is always in favor of the requirement of street improvements whenever possible.

Mr. Berkley asked if the Commission members would be willing to add a condition to the plan to require that the street improvements be reconsidered if the subject property is redeveloped.

Ms. Blanton asked if it would be appropriate to add a condition that a sidewalk would be required at the time of improvements to Old Todds Road. She said that she believed that people might walk to the childcare center if a sidewalk was available.

Mr. Berkley stated that, on other sections of Todds Road, sidewalks were included as part of road improvement projects.

Mr. Penn asked if it would be appropriate to add a condition #14 to require sidewalks at the time of redevelopment of the property, and if a condition should be added to limit the number of children to 200. Mr. Saltee answered that condition #8 for the conditional use request includes a limit of 200 children.

Zoning Action: A motion was made by Mr. Penn, seconded by Mr. Cravens, and carried 10-0 (Brewer absent) to approve MARC 2014-5, for the reasons provided by staff.

Conditional Use Action: A motion was made by Mr. Penn, seconded by Ms. Mundy, and carried 10-0 (brewer absent) to approve the requested conditional use, for the reasons provided by staff, subject to the eight conditions as listed on the agenda.

Development Plan Action: A motion was made by Mr. Penn, seconded by Ms. Mundy, and carried 10-0 (Brewer absent) to approve ZDP 2014-19, subject to conditions #1 - #12 as listed in the revised staff recommendation, and changing condition #13 to read: "Denote that improvements to Old Todds Road shall be revisited upon any redevelopment proposed for the subject property."

3. **ZOTA 2014-2: AMENDMENTS TO ARTICLES 8-17, 8-18, & 8-19 & ARTICLE 27 TO IMPLEMENT "DESIGN EXCELLENCE"** – petition for a Zoning Ordinance text amendment to implement, in part, the "Design Excellence" program.

REQUESTED BY: URBAN COUNTY COUNCIL

PROPOSED TEXT: *(Proposed text is available upon request from the Division of Planning)*

The Zoning Committee Recommended: **Approval**, for the reasons provided by staff.

The Staff Recommends: **Approval** for the following reasons:

1. The proposed text amendment is the first step in implementing the "Design Excellence" program, as developed by the Design Excellence Task Force, an Urban County Council appointed group. The Design Excellence Task Force was tasked with creating an approach to improve the overall design aesthetic of the downtown area.
2. The proposed changes to Articles 8 and 27 will create a new Downtown Area Design Excellence Board to review applications for redevelopment, rehabilitation and demolition that result in an exterior change to a property within the three downtown business zones (Downtown Business [B-2], Downtown Frame Business [B-2A], and Lexington Center Business [B-2B]), utilizing yet-to-be adopted design standards and guidelines.

Staff Presentation: Ms. Wade presented the staff report, explaining that the proposed amendments to parts of Article 8 and all of Article 27 would replace the existing Courthouse Area Design Review Board with the Downtown Area Design Excellence Board. She displayed a map of the proposed Design Excellence area boundary, noting that it includes all of the B-2 zoning areas.

Ms. Wade stated that the Design Excellence Task Force (DETF) was established in the summer of 2010, with the goal of creating a way to develop better building design in the downtown and other business areas. The DETF met numerous times and considered several other approaches to achieving design excellence, but determined that the best way would be to use the three Downtown Business zones as the area in which Design Excellence is enforced. The three Downtown Business zones are proposed to be modified, along with the creation of a Design Excellence Board and drafting the rules by which they will review projects within the defined area. In addition, the Courthouse Area Overlay Zone will be dissolved, in order avoid a duplication of effort. Ms. Wade said that the Urban County Council will also consider staffing changes, new initiatives, and the adoption of Design Guidelines, which are currently in draft format. She noted that the DETF has reviewed the proposed Design Guidelines numerous times as part of their working group. The DETF is also proposing new incentives, which will be presented to Council in the near future.

Ms. Wade stated that the proposed changes to the Zoning Ordinance are only one portion of the Design Excellence program; the Council will "hold" those changes until the rest of the pieces are ready to move forward, collectively. She said that, in general, the text amendment establishes the process for the review of redevelopment, rehabilitation, and demolition of structures in the downtown area, through Article 27. The proposed changes to Article 8 modify the lot, yard, and height requirements, and the special provisions sections of each of the downtown zones. Those changes also note that, in any case where a Historic District (H-1) overlay exists along with a B-2 zone, the H-1 Design Guidelines and process would take precedence over new design excellence Design Guidelines for the B-2 zones.

Ms. Wade stated that the proposed text amendment for the B-2A zone includes two changes that are not reflected in the B-2 or B-2B zones. Specifically, building height will be allowed up to 12 stories; currently the text limits it to three stories, or up to 10 stories with Planning Commission approval. In addition, off-street parking requirements would be reduced in the B-2A zone.

With regard to the proposed changes to Article 27, Ms. Wade said that the Design Excellence Board will have seven members, rather than the five that serve on the Courthouse Area Design Review Board (CHADRB). The Board would be representative of design professionals; a resident within the boundary; a business owner within the boundary; a real estate person or developer within the boundary; and a member at-large. The new Board will have the authority to review applications for redevelopment and demolition, using the new Design Guidelines upon their adoption. Ms. Wade noted that one of the specific improvements intended with the changes to Article 27 is to allow more staff-level approval, rather than focusing on Board approval. The proposed changes list the criteria by which the staff can evaluate projects; beyond the scope of staff evaluation, a project would be required to be reviewed by the Board. Other changes to Article 27 include the appeal process for the Design Excellence Board, which will involve appeals to Fayette Circuit Court, rather than the Planning Commission. Enforcement language will be updated to assign a Design Excellence Officer the responsibility of reviewing construction and determining compliance. In addition, clarification was added to denote that economic hardship cannot be claimed based on deferred maintenance of historic buildings.

Ms. Wade stated that, after reviewing the proposed text forwarded from the Council, the staff found that some of the areas that should have been underlined were not. For clarification, the staff identified those areas so that the changes would be clear and concise. The staff and the Zoning Committee recommended approval of the proposed text changes, for the reasons provided as listed in the staff report and on the agenda.

Commission Question: Mr. Penn asked if BOAR appeals in the Design Excellence boundary area would be heard by the Planning Commission, or the Design Excellence Board. Ms. Wade answered that, if the appeal involved the action of the BOAR, appeals would still need to be heard by the Planning Commission.

Mr. Owens asked Ms. Wade to outline the changes presented in the Staff Alternative text. Ms. Wade answered that the changes involved primarily missing underlining, or rearranging the text. She said that there were also two small changes that were proposed by the staff of the Downtown Development Authority. The first, on page 27-5, would keep the words "any part of" and not add "25% or more." This section of the Ordinance would require authorization permits when there is an exterior change or any type of demolition. Ms. Wade explained that the next two sections define the 25% break point in proposed demolition to denote what is large-scale and what is small-scale, which could qualify as a staff approval; so that information is not needed in Section 27-5(a). She said that the second proposed change occurs on page 8, and refers to multi-phase Board review. The DDA staff suggests that a clarification be added that would direct the reader to a Section above that outlines the guidelines for a large-scale new construction project.

Ms. Blanton asked if the text that refers to "any exterior change" would include painting, or new windows. Ms. Wade answered that it would not include painting the exterior of a building that was painted before, which is specified in an earlier section.

Ms. Wade noted that the staff had received a letter of support from the Fayette Alliance for this amendment, which she entered into the record.

Citizen Comment: No one in the audience wished to speak about this proposal.

Action: A motion was made by Mr. Wilson, seconded by Ms. Plumlee, and carried 10-0 (Brewer absent) to approve the Staff Alternative Text of ZOTA 2014-2, including the two changes proposed by the Downtown Development Authority, for the reasons provided by staff.

**4. LEXINGTON VEIN & AESTHETIC CENTER ZONING MAP AMENDMENT & INDIAN HILLS SUBDIVISION (LEXINGTON VEIN CENTER, PLLC)**

- a. MAR 2014-6: LEXINGTON VEIN & AESTHETIC CENTER (5/4/14)\* - petition for a zone map amendment from a Single Family Residential (R-1B) zone to a Professional Office (P-1) zone, for 0.6610 net (1.0641 gross) acres, for property located at 3116 Harrodsburg Road.

COMPREHENSIVE PLAN AND PROPOSED USE

The 2013 Comprehensive Plan's mission statement is to "provide flexible planning guidance to ensure that development of our community's resources and infrastructure preserves our quality of life, and fosters regional planning and economic development." The mission statement notes that this will be accomplished while protecting the environment, promoting successful, accessible neighborhoods, and preserving the unique Bluegrass landscape that has made Lexington-Fayette County the Horse Capital of the World. The petitioner proposes to rezone the subject property to P-1 in order to develop a new medical office building on the site.

The Zoning Committee Recommended: **Approval**, for the reasons provided by staff.

The Staff Recommends: **Approval** for the following reasons:

1. The requested Professional Office (P-1) zone for the subject property is in agreement with the 2013 Comprehensive Plan, and is also in agreement with the land use recommendations of the *Indian Hills Small Area Plan*, adopted as an amendment to the 2001 Comprehensive Plan, which preceded it.
  2. The 2013 Goals and Objectives support infill & redevelopment in all areas of the Urban Services Area (A.2), call for a variety of job opportunities to be provided in the Urban County (C.1.a), and promote growth for healthcare providers and small businesses (C.2.b. & D.2.b.).
  3. The text of the 2013 Comprehensive Plan encourages site redevelopments to accommodate new growth over our planning period (p. 97). Also, growth in healthcare is especially recommended by the Plan (on p. 78) and appropriate employment land uses near neighborhoods are also recommended (on p. 74). Further, the Plan states the need to provide access between neighborhoods and jobs (p. 40 & p. 73), and the need for jobs to be provided locally with higher wages (p. 65).
  4. This recommendation is made subject to approval and certification of ZDP 2014-17: Indian Hills Subdivision (Lexington Vein Center, PLLC) prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.
- b. ZDP 2014-17: INDIAN HILLS SUBDIVISION, UNIT 1 (LEXINGTON VEIN CENTER, PLLC) (5/4/14)\* - located at 3116 Harrodsburg Road. **(Wheat & Ladenburger)**

The Subdivision Committee Recommended: **Approval**, subject to the following conditions:

1. Provided the Urban County Council rezones the property P-1; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. Denote that KYTC approval will be required for access to Harrodsburg Road at time of final development plan.
7. Resolve dumpster location at time of final development plan.
8. Discuss circulation around building and impact on roots of significant Cherry tree.
9. Resolve tree canopy relative to number of Ash trees at time of final development plan.
10. Discuss required landscape buffer per Article 18 of the Zoning Ordinance and Indian Hills Small Area Plan.

Zoning Presentation: Mr. Sallee presented the staff report on the requested zone change, explaining that the petitioner is proposing to rezone the subject property from R-1B to P-1. He displayed an aerial photograph, noting that the subject site is located a short distance away from Fire Station #20, which is one of the predominant land uses in the area, at the corner of Arrowhead Drive and Harrodsburg Road. The subject property is separated from that facility by a Masonic Lodge, and is bounded by the Indian Hills subdivision to the east; the Rabbit Run subdivision to the south; and the Harrods Hill subdivision, across Harrodsburg Road. Mr. Sallee noted that the staff had distributed to the Commission members some excerpts from the Indian Hills Small Area Plan (IHSAP), as well as a revised recommendation from the staff.

Mr. Sallee displayed the following photographs of the subject property and surrounding area: 1) an oblique view from the south, noting the property frontage along a service road, the existing access to the service road, and the existing

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single family residence on the property, which is proposed to be removed; and 2) a closer view from the south, noting the mature trees along the property frontage and its boundaries with the Rabbit Run subdivision and the Masonic Lodge. Mr. Sallee stated that the zoning surrounding the subject property is R-1B in Indian Hills; R-3 in Rabbit Run; and R-1C in Harrods Hill.

Displaying an excerpt from the IHSAP, Mr. Sallee stated that the future of the area was extensively considered more than a decade ago as part of the process of drafting that plan. That SAP predominantly considered the properties that front the Harrodsburg Road service road, between the subject property and Corporate Drive. The SAP found that the land uses in the area were Professional Office/Professional Services, or Residential. The Plan recommended that the properties along the service road, including the subject property and three other residences, convert to Professional Services in the future. One of those residences, at the opposite corner of Arrowhead Drive, has converted to a branch bank. The Plan also recommended that the three office uses along the frontage at Corporate Drive remain in use for Professional Services in the future. The IHSAP was vetted with the neighbors in the area, and was adopted in 2003 as an amendment to the 2001 Comprehensive Plan.

Mr. Sallee said that the petitioner's justification for the requested zone change is that it is in agreement with the new 2013 Comprehensive Plan. In the justification, the petitioner cited Goals & Objectives that were furthered, one of which notes that there is specific text within the Plan that calls for the growth of medical and health-related land uses in the community, because they are a vital part of the region's economy. In the report, the staff cited two other statements from the Comprehensive Plan, recommending the location of good-paying jobs close to neighborhoods, and a need for jobs with higher wages in general.

Mr. Sallee stated that the staff agreed with the petitioner's justification, and that the proposed zone change is in agreement with the 2013 Comprehensive Plan. The staff considered recommending conditional zoning for the subject property, based on a recommendation in the IHSAP that specific land use buffers be developed and implemented at the time that the properties along the Harrodsburg Road frontage convert to non-residential use. That Plan included a strong recommendation for a minimum of a 15' buffer for the subject property, from the adjacent residential uses. At the Zoning Committee meeting three weeks ago, that landscape buffer was not proposed along the side of the property that abuts the Rabbit Run subdivision, but it has been included as part of a revised development plan. A 15' buffer is also proposed along the rear property line. The trees along the Rabbit Run property line are a mix of species, included a significant cherry tree that was of concern to the staff at the time of the Zoning Committee meeting. Along the rear property line, many of the trees are ash, which could be susceptible to the emerald ash borer that has invaded the region in recent years.

Mr. Sallee stated that the Zoning Committee recommended approval of this requested zone change, and the staff recommended approval as well, for the following revised reasons:

1. The requested Professional Office (P-1) zone for the subject property is in agreement with the 2013 Comprehensive Plan, and is also in agreement with the land use recommendations of the *Indian Hills Small Area Plan*, adopted as an amendment to the 2001 Comprehensive Plan, which preceded it.
2. The 2013 Goals and Objectives support infill & redevelopment in all areas of the Urban Services Area (A.2), call for a variety of job opportunities to be provided in the Urban County (C.1.a), and promote growth for healthcare providers and small businesses (C.2.b. & D.2.b.), which this proposal also supports.
3. The text of the 2013 Comprehensive Plan encourages site redevelopments to accommodate new growth over our planning period (p. 97). Also, growth in healthcare is especially recommended by the Plan (on p. 78) and appropriate employment land uses near neighborhoods are also recommended (on p. 74). Further, the Plan states the need to provide access between neighborhoods and jobs (p. 40 & p. 73), and the need for jobs to be provided locally with higher wages (p. 65).
4. This recommendation is made subject to approval and certification of ZDP 2014-17: Indian Hills Subdivision (Lexington Vein Center, PLLC) prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.

Development Plan Presentation: Ms. Gallt presented the corollary preliminary zoning development plan, noting that a revised staff recommendation had been distributed to the Commission members prior to the start of the hearing. She said that the petitioner is proposing to maintain the existing driveway access to the property, and to construct another access, closer to the northern side of the property. The revised plan also depicts the 15' landscape buffer as recommended by the IHSAP along two of the property lines.

Ms. Gallt stated that the Subdivision Committee recommended approval of this plan, subject to the 10 conditions as listed on the agenda. Since that meeting, the staff received a revised plan that depicts the 15' landscape buffer. With the filing of that revised plan, the petitioner was able to meet three of the original conditions. The staff is now recommending approval of this request, subject to the following conditions:

1. Provided the Urban County Council rezones the property P-1; otherwise, any Commission action of approval is null and void.

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2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. Denote that KYTC approval will be required for access to Harrodsburg Road at time of final development plan.
- ~~7. Resolve dumpster location at time of final development plan.~~
- ~~8. Discuss circulation around building and impact on roots of significant Cherry tree.~~
- 7.9. Resolve Denote that the tree canopy requirements relative to the number of Ash trees shall be addressed at time of final development plan.
- ~~10. Discuss required landscape buffer per Article 18 of the Zoning Ordinance and Indian Hills Small Area Plan.~~

Ms. Gallt stated that condition #7 referred to the location originally proposed for the dumpster, which was located within the 15' buffer area. The revised plan depicts the dumpster in a different location, so that condition could be deleted. Condition #8 referred to the location of the proposed driveway, which was also depicted in the 15' buffer area near the significant Cherry tree. The petitioner is now proposing a slight relocation of the driveway, so that condition could be deleted as well. Condition #10 required the depiction of the 15' buffer area itself on the plan, which has been accomplished on the revised submission. Ms. Gallt said that new condition #7 refers to the numerous existing ash trees that are located along the rear property line. The staff is recommending that this condition be addressed at the time of the Final Development Plan for the property.

Petitioner Representation: Richard Murphy, attorney, was present representing the petitioner. He stated that the petitioner is in agreement with the staff recommendations, including the conditions for approval of the development plan.

Mr. Murphy noted, with regard to the previous conditions for approval, that the petitioner has been working with Gary Warner of the Division of Solid Waste regarding the dumpster location. He said that the revised plan depicts the dumpster location near the front of the property. The petitioner's medical office does not generate a great deal of waste, so the petitioner does not believe that a dumpster will be necessary. Mr. Warner has agreed to a note to be placed on the plan, to read: "The pad for the dumpster will be constructed, but a dumpster shall not be required, so long as the property does not exceed two 90-gallon roll cart containers. If trash volumes exceed this amount, a dumpster would be required." Mr. Warner's concern was that another use, which would generate more waste, could locate on the property at some point, and a dumpster pad would be needed. The nearby Masonic Lodge, fire station, and bank all use roll cart containers for their waste, so a truck to service those containers will already be in the area each week.

Mr. Murphy stated that the subject property is the only residential use located along this portion of the Harrodsburg Road service road. The subject property has no access via any other roadway besides that service road. Mr. Murphy said that he was involved in the IHSAP, as part of the development of the bank. At that time, there was a great deal of concern among residents of the Indian Hills neighborhood that the Masonic Lodge had bought the lot that fronted the service road, and a lot behind it that had frontage on Apache Trail. The lodge then constructed a driveway access to Apache Trail. The residents of Indian Hills, although in support of the change of use of the properties that fronted on the service road, did not want the traffic from those new uses to have access to the neighborhood streets.

Mr. Murphy displayed an excerpt from the IHSAP, noting that the committee recommended Professional Services use for the subject property, based on the following findings:

- "1. The undeveloped service road lots are at a lower elevation than the surrounding homes.
2. Two-story structures along the service road would enhance noise attenuation along Harrodsburg Road, which is proposed to be widened.
3. Office use has fewer noise/nuisance complaints than any other use in the community.
4. Harrodsburg Road is generally a residential and professional office corridor."

Mr. Murphy said that, at the time of the IHSAP, the main land uses considered for the three properties that front on the service road were apartments, professional offices, or retail and restaurant uses. The Plan found that Harrodsburg Road has primarily residential and professional service land uses, and it has a special consideration that no conditional use parking be allowed on neighboring lots. That special consideration was based on the Masonic Lodge's purchase of the lot behind them specifically to be used for parking.

Mr. Murphy noted that the IHSAP also stated: "The proximity of Harrodsburg Road to the service road lots, and the future widening, makes it less desirable for residential uses due to noise and traffic on Harrodsburg Road." He said that the subject property contains the last remaining house on this portion of the service road; two other residences remain between the bank and Corporate Center, but they are proposed for professional office use, as well.

Further referring to the IHSAP, Mr. Murphy said that page 27 of that report noted a number of special considerations that were adopted: 1) that no additional land be obtained for off-street parking; 2) detention must be onsite; 3) a

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minimum 15' landscape buffer is preferred along the residential boundaries; 4) lighting must be directed away from residential uses; 5) access to the professional office uses will be only from the service road; 6) the maximum building height will be 35'; 7) a consideration that relates to the fire station; 8) a consideration that relates to the Masonic Lodge; 9) no conditional use parking on neighboring lots; and 10) commercial and retail uses are inappropriate for the area. He stated that, typically in the P-1 zone, the landscape buffer can be reduced to 5' if a fence is provided along the property line. There is an existing fence along the property line, and the petitioner originally proposed to reduce the landscape buffer to less than 15'. The Division of Fire and Emergency Services staff was concerned about the proposed buffer, because they needed a full 20' driveway in the rear of the property in order to provide access for their trucks. Since the Subdivision Committee meeting, the petitioner has reduced the size of the proposed building, in order to fully comply with the 15' landscape buffer, as well as the Division of Fire's request for a 20' driveway. Mr. Murphy reiterated that this proposal meets all eight of the ten IHSAP special considerations that apply to the subject property.

Mr. Murphy displayed the following photographs of the subject property: 1) an aerial view of the property, noting the location of the home of an objector to this request, and the extent of the existing landscaping along the shared property boundary; and 2) a closer view of the existing landscaping on the property, noting the existing 6' fence, which is proposed to remain in place. Mr. Murphy said that the petitioner intends to maintain the existing landscape buffers, and is aware that some of the trees are ash and might need to be removed. The petitioner does not intend, however, to remove all of the ash trees at once, as that would leave gaps in the buffer. The intention is to examine the ash trees, and treat those that are determined to be healthy enough to do so.

Mr. Murphy stated that, although the petitioner would be permitted to construct a two-story building on the subject site, a one-story building is proposed. He noted that most of the houses that border the subject property are two stories in height. The petitioner is as interested in maintaining privacy for his staff and patients as the neighbors on Blenheim Way are in keeping their homes private.

Mr. Murphy concluded by reiterating that the proposed zone change meets every requirement of the Indian Hills Small Area Plan, which was developed following six months of study and many public meetings. He added that the 2013 Comprehensive Plan places a strong emphasis on redevelopment and the provision of health care jobs.

Commission Question: Ms. Plumlee asked if the petitioner would consider treating the ash trees for the emerald ash borer, since spring is a good time of year for the treatment. Mr. Murphy answered that the petitioner would consider treating the trees, once he has purchased the property.

Citizen Objection: Justin Tincer, 3016 Blenheim Way, stated that he was concerned about the height of the subject property relative to the residential properties along Blenheim Way. He said that, due to that grade difference, his two-story house is "on eye level" with the structure on the subject property. Mr. Tincer believes that, unless the petitioner is willing to grade the subject property to a lower elevation, he will lose privacy on his property.

Mr. Tincer stated that he was also concerned about additional stormwater runoff, since the proposed structure on the subject property is nearly twice the size of the existing residence, and more impervious surface will be added. He displayed a photograph taken from his back deck, noting that his back yard is quite steep. He said that he has not had any flooding issues to date, but he believes that the additional impervious surface on the subject property could create such issues.

Petitioner Rebuttal: Mr. Murphy stated that the IHSAP noted that the subject property was actually lower than most of the surrounding uses. He noted that the proposed new building on the property will be constructed further away from the Blenheim Way property line than the existing residence. A stormwater detention system, likely underground, will be added to the property, and a stormwater plan will be required at the time of a Final Development Plan for the property. The petitioner does propose to add some paving to the property, but will not increase the impervious surface a great deal, since there is an existing pool and patio area to the rear of the residence.

Staff Rebuttal: The staff had no rebuttal comments.

Commission Question: Mr. Owens asked who owns the 6' fence along the property line. Mr. Murphy answered that the fence belongs to Mr. Tincer.

Zoning Action: A motion was made by Ms. Blanton, seconded by Ms. Mundy, and carried 10-0 (Brewer absent) to approve MAR 2014-6, for the reasons provided by staff.

Development Plan Action: A motion was made by Ms. Blanton, seconded by Ms. Mundy, and carried 10-0 to approve ZDP 2014-17, with the seven revised conditions as recommended by staff, adding a new condition #8 according to add the email presented from Gary Warner of the Division of Solid Waste.



1. **ZOTA 2014-1: AMENDMENT TO ARTICLE 5-2(a) FOR ZONING COMPLIANCE PERMITS** – petition for a Zoning Ordinance text amendment to provide clarification about when a Zoning Compliance Permit is required.

REQUESTED BY: URBAN COUNTY PLANNING COMMISSION

PROPOSED TEXT: (Note: Underlined text indicates an addition to the current Zoning Ordinance.)

## **ARTICLE 5: ADMINISTRATION, ENFORCEMENT AND VIOLATIONS**

**5-2 PERMITS REQUIRED FOR CONSTRUCTION, DEMOLITION, AND LOCATION OF STRUCTURES** - Permits shall be required for the following activities and shall be issued by the designated Division in conformity with the provisions of this Zoning Ordinance.

**5-2(a) ZONING COMPLIANCE PERMIT** - After January 1, 2012, no building or premises shall be occupied for any use, nor any use be changed, unless a zoning compliance permit has been issued by the Division of Planning. Such permits shall not be required for agricultural uses as defined in KRS, single family or two-family residences; however, this provision shall not be construed as to exempt such uses from the requirements of the Zoning Ordinance, conditional zoning restrictions, development plan restrictions, or other similar duly enacted restrictions.

The Zoning Committee Recommended: **Approval**, for the reason provided by staff.

The Staff Recommends: **Approval** for the following reason:

1. The proposed text amendment clarifies that Zoning Compliance Permits are necessary for the occupancy of all sites, not just buildings. This modification will reduce any perceived ambiguity about when such a permit is required by the Zoning Ordinance.

Staff Presentation: Ms. Wade presented the staff report, noting that the proposed text amendment involves a very minor change to Section 5-2(a) of the Zoning Ordinance. She said that the staff is proposing to add the words “or premises” to the section that describes when a zoning compliance permit is necessary. Currently, the wording in the Zoning Ordinance states that a zoning compliance permit is required when a building is constructed or occupied, or there is a change of use. This addition would clarify that a zoning compliance permit is also required when a site occupied, rather than just a building.

Ms. Wade stated that the current text has not caused any issues to date, but the staff has recently identified it as a possible loophole. She said that there are some land uses that do not require the use of buildings. The proposed text amendment would clarify that, in order to occupy a property, a zoning compliance permit is required. Ms. Wade said that the staff and the Zoning Committee recommended approval of this request, for the reason as listed in the staff report and on the agenda.

Commission Question: Mr. Penn asked if the reference in the text to “special events” applies to the entire county, or just within the Urban Service Area boundary. He asked if a permit is required for any type of special event. Ms. Wade answered that carnivals are a good example of a special event in the Ordinance today. They are a principal use in many zones, but they require a permit to occupy a particular property. Mr. Penn asked if the proposed text amendment would impact the recreation ZOTA, on which the staff and the Planning Commission have been working. Ms. Wade responded that fireworks stands are a temporary use, but they require zoning compliance permits to be issued. She added that she would anticipate that seasonal activities and other special events would require zoning compliance permits as well.

Citizen Comment: There were no citizens present to comment on this item.

Action: A motion was made by Ms. Blanton, seconded by Ms. Plumlee, and carried 10-0 (Brewer absent) to approve ZOTA 2014-1, for the reason provided by staff.

## **VI. COMMISSION ITEMS**

- A. **WELCOME NEW PLANNING COMMISSION MEMBER** – Mr. Owens stated that he would like to welcome the newest Planning Commission member, Joe Smith, who was recently appointed and sworn in. He noted that Mr. Smith had served on the Board of Adjustment for two years, and said that he believed that Mr. Smith would be a huge asset to the Planning Commission.

## **VII. STAFF ITEMS** – No such items were presented.

## **VIII. AUDIENCE ITEMS** – No such items were presented.

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IX. **MEETING DATES FOR April, 2014**

Subdivision Committee, Thursday, 8:30 a.m., Planning Division Office (101 East Vine Street).....	April 3, 2014
Zoning Committee, Thursday, 1:30 p.m., Planning Division Office (101 East Vine Street).....	April 3, 2014
<b>Subdivision Items Public Meeting</b> , Thursday, 1:30 p.m., 2 <sup>nd</sup> Floor Council Chambers.....	<b>April 10, 2014</b>
Planning Commission Work Session, Thursday, 1:30 p.m., 2 <sup>nd</sup> Floor Council Chambers.....	April 17, 2014
Technical Committee, Wednesday, 8:30 a.m., Planning Division Office (101 East Vine Street).....	April 23, 2014
<b>Zoning Items Public Hearing</b> , Thursday, 1:30 p.m., 2 <sup>nd</sup> Floor Council Chambers.....	<b>April 24, 2014</b>

X. **ADJOURNMENT** – There being no further business, Chairman Owens declared the meeting adjourned at 3:35 p.m.

TLW/TM/CT/BJR/BS/src

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